Exhibit A

THE COURT: Stop. No. Okay. You had your bite at the apple, Mr. Mastro. That's it. You got it.

Go ahead, Ms. Knauer, finish.

MS. KNAUER: I can't say for sure whether there is such a case or not, but I don't think Mr. Mastro can either.

THE COURT: Okay. Thank you.

MS. KNAUER: Thank you.

(Brief pause.)

THE COURT: All right. Ladies and gentlemen, we are gonna stand in recess. The Court's gonna go back into chambers and think about a few things and then the Court will come back out at an appropriate point in time and advise the parties of what's next.

We stand in recess.

THE DEPUTY CLERK: All rise.

(Recess taken.)

THE DEPUTY CLERK: All rise.

THE COURT: Be seated, please.

I thank everyone for their patience and indulgence.

Before the Court is plaintiff's application for an Order to Show Cause to set a briefing schedule on oral argument for clarification and/or reconsideration and for a temporary restraining order and preliminary injunction.

After consideration of the filings relative to plaintiff's application, today's oral argument, and the

Court's opinion dated December 30, 2024, and all other papers and proceedings in this action, the Court makes the following findings and conclusions:

With respect to plaintiff's -- as to the issue of clarification and reconsideration, with respect to plaintiff's motion for clarification or reconsideration, the Court needs to spend little time.

Plaintiff purports to bring its motion under Federal Rules of Civil Procedure 59 and 60, see plaintiff's motion at 15, also citing without elaboration Local Civil Rule 7.1(i) providing for motions for reconsideration.

Problematically, plaintiff fails to explain how its request meets the standards set under those rules, see generally the same, referring to Federal Rule of Civil Procedure 59 to 60 and citing Local Civil Rule 7.1(i), in only a single paragraph in the entire motion.

Plaintiff's failure to provide these rules is particularly glaring with respect to Rule 59 which only applies to final judgments. The Court notes that it has not entered final judgment in this action.

Therefore, as conceded by plaintiff, Rule 59 is not applicable here. See Federal Rule of Civil Procedure 59 providing for motion to alter or amend a judgment, emphasis added. Federal defendants' response at 10, Note 7.

As for Federal Rule of Civil Procedure 60 and local

Rule 7.1(i), as defendant intervenors explain, those rules have clear standards for their application. See defendant intervenor's response at 910.

Noting that the Third Circuit has held that a court may not grant a motion for reconsideration unless the moving party shows at least one of the following:

1: An intervening change in the controlling law;

2: The availability of new evidence that was not available when the Court issued its order;

Or 3: The need to correct a clear error of law or fact to prevent manifest injustice, quoting *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677, Third Circuit, 1999.

Given plaintiff's failure to point to any of these three -- those three criteria or even explain the applicable standard, the Court will reject plaintiff's motion for, quote, reconsideration.

To the extent that plaintiff seeks clarification as to the Court's December 30, 2024, opinion on whether that opinion vacated the final EA and FONSI, the omission of any language regarding injunctive relief as well as the lack of an order directing vacatur was clear enough and should speak for itself.

However, to avoid any further confusion or needless motion practice, the Court will confirm that its opinion did not vacate the final EA or FONSI. Instead, it ordered remand

on a limited set of issues for further explanation and, if appropriate, reconsideration.

The District of Columbia Circuit decision in *Allied-Signal, Inc. v. NRC*, 988 F.2d 146, D.C. Circuit, 1993, is the commonly accepted standard for deciding whether a remand does or does not require an accompanying vacatur of the underlying agency action.

The *Allied-Signal* standard has two components. The first is the evaluation of the seriousness of the agency's actions and deficiencies and thus the extent of doubt whether the agency chose correctly.

The second is the evaluation of disruptive consequences of an interim change that may itself be changed. The test is a balancing of the two components left to the exercise of the court's discretion.

Under the consideration set forth in *Allied-Signal* and precedent applying that decision in the Third Circuit and elsewhere, this Court remanded the matter without vacatur as it appeared reasonably likely that the FHWA and project sponsors would be able to further explain their decision in such a manner that would render the CBD Tolling Program to being ultimately sustained. See, for example, *Prometheus Radio Project v. Federal Communications Commission*, 824 F.3d at page 33 and 52, Third Circuit, 2016.

Vacatur typically is inappropriate where it is

conceivable that the agency can, if given the opportunity, create a supportable action.

Also citing *Healthy Gulf v. FERC*, 107 F.4th 1033, 1047, D.C. Circuit 2024, remanding without vacatur because it was reasonably likely that FERC could reach the same decision on remand and vacatur would needlessly disrupt the project.

Also citing *Food & Water Watch v. FERC*, 28 F.4th 277, 292, D.C. Circuit 2022; and *City of Overland Ohio v. FERC*, 932 F.3d 599, at page 611, D.C. Circuit 2019, remanding without vacatur because it was plausible that the agency will be able to supply the explanations required and vacatur of the commission's orders would be quite disruptive.

As plaintiff acknowledges in its reply, remand without vacatur has been found to be appropriate where the deficiencies in the challenged agency action are not serious and, two, vacatur is likely to create a serious disruption.

Plaintiffs reply at 1 through 2 quoting *Council Tree v. FCC*, 619 F.3d 238 at page 258, Third Circuit, 2010.

Despite plaintiff's arguments to the contrary, the Court concludes that both elements are met here. Here the Court has remanded two issues to the FHWA. The first is the FHWA decision not to allocate any place-based mitigation dollars to New Jersey in contrast to the allocations to the Bronx.

The Court found the discrepancy to be arbitrary and

capricious and remanded to the FHWA for explanation.

The second is the FHWA's reasoning as to the possible alternatives to CBD tolling in light of the FHWA's post-final EA and FONSI decisions regarding the actual tolling schedules.

For the mitigation remand, the Court finds pursuant to the *Allied-Signal* standard that vacatur is inappropriate and that the issue of mitigation dollars goes only to the paying out of tolling funds or other financial resources, not to the operation of the tolling itself.

The mitigation finding is not so serious as to justify vacatur, thereby disrupting the collection of the tolls.

On the issue of alternatives, the Court finds that the issue of vacatur is premature. Whether or not there is a problem with the agency's alternatives and analysis requires reviewing the supplemental record and the Court will not prejudge that issue by requiring vacatur of the initial alternatives analysis.

The Court's December 30, 2024, opinion explains in detail why plaintiff's challenges to the program lack merit and granted a limited remand for further explanation on two narrow issues but otherwise sustained the underlying administrative analysis.

Defendants' responses -- collectively defendants and defendant intervenor's responses to plaintiff's motion clearly demonstrate how vacatur would cause a serious disruption,

given the pending launch of the program tomorrow night. See, e.g., Defendant Intervenor's response at 26 to 28, detailing variety of monetary costs and other public interests that would be damaged by enjoining the program.

This should provide the, quote, clarification, closed quote, sought by plaintiff in its motion which the Court will otherwise deny.

As to the preliminary injunction, in considering plaintiff's application for preliminary injunctive relief, the Court is guided by *Winter v. NRDC*, 555 U.S. page 7, 2008, a foundational case in the NEPA context that addresses when preliminary injunctive relief should be granted by a court in connection with the alleged NEPA violation.

In that decision the court explained a four-factor analysis postulating that a plaintiff seeking a preliminary injunction must establish a likelihood of success on the merits, a likelihood of irreparable injury in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest, citing NEPA Law and Litigation, section 4:68, Second Edition, 2024.

The Court further held that a plaintiff must show more than a possibility of irreparable harm. Rather, it must show that irreparable injury is likely in the absence of an injunction. Citing again the NEPA Law and Litigation,

section 4:68. Quoting *Winter*, see also, right, the same NEPA Law and Litigation, section 4:68: (Reading.)

> The court was quite firm in requiring the showing of a likelihood of irreparable injury. A showing of a possibility of injury will not suffice, even if the plaintiff provides a strong showing of likelihood of success.
>
> The first two factors are most critical and a court only need reach the remaining factors if the movant first demonstrates that it can win on the merits and that it will suffer irreparable harm in the absence of preliminary relief.

Reilly v. The City of Harrisburg, 853 F.3d 179, Third Circuit, 2017. Additionally, the public interest and balance of harms inquiries may merge in cases such as NEPA litigation in which the Government is the party opposing the injunction. See NEPA Law and Litigation, section 4:73. See also *Nken*, that's N-K-E-N, *v. Holder*, 556 U.S. 418 at page 435, 2009.

Here, after review of the record and consideration of the proceedings today, plaintiff has failed to demonstrate that it is likely to succeed on the merits in its effort to vacate the final EA and FONSI and require the FHWA to prepare an EIS, nor has plaintiff shown the irreparable harm required to prevail in its motion for emergency injunctive relief.

With respect to the issue of likelihood of success on the merits, the Court has recently issued a lengthy opinion on the merits rejecting the majority of plaintiff's claims, including its request to vacate the final EA and FONSI and order the preparation of an EIS.

While the Court did remand for consideration and further explanation as to a limited discrete set of issues having to do with the agency's consideration of alternatives and the provision of mitigation funding, those issues do not appear to pose insurmountable obstacles for the ultimate approval of the CBD Tolling Program.

Thus, while plaintiff has demonstrated some likelihood of success on the merits as to the issue of mitigation funding, this limited remand in and of itself does not demonstrate that plaintiff is likely to prevail on the merits of its broader claims.

Putting plaintiff's likelihood of success after remand to the side, plaintiff's request for emergency injunctive relief must fail as plaintiff has failed to demonstrate a likelihood of irreparable harm.

As federal defendants emphasize, plaintiff fails to demonstrate its claimed irreparable harm with any evidence; see federal defendants response at 20 to 21, relying on *City of Tempe v. FAA*, 239 F.Supp.2d, 55, District of D.C., 2003, among other cases.

Instead, plaintiff's showing of irreparable harm consists of a single record citation and some case precedent. See plaintiff's motion at 23 to 28, citing in the administrative record DOT_0036 -- should be 0003635 as evidence of air quality harm to New Jersey if congestion pricing goes into effect.

As noted above and recognized in the parties' briefs, the primary basis for the Court's remand was a lack of specificity as to place-based mitigation funding and potentially impacted areas in New Jersey.

While plaintiff decries how critical this mitigation funding is to ameliorate the effects of environmental harm from the program, see plaintiffs motion at 23 to 28 again, plaintiff cannot escape the fact that the harm at issue here is fundamentally one of money.

As plaintiff has failed to demonstrate a likelihood of irreparable harm, that is harm that cannot be remedied by monetary damages, the Court will deny plaintiff's motion for emergency injunctive relief, see *Erlbaum v. New Jersey Department of Environmental Protection*, No. 16, Civil Docket 8198, 2017 Westlaw 465466, at page 15, District of New Jersey, February 3, 2017.

The possibility that adequate compensatory or other corrective relief will be available at a later date in the ordinary course of litigation weighs heavily against the claim

of irreparable harm. Quoting *In Re: Revel AC, Inc.*, 802 F.3d 558, 571, Third Circuit, 2015.

Defendant intervenors have acknowledged that such compensatory relief remains available. See defendant intervenor's response in opposition to plaintiff's motion for emergency relief at page 23, ECF No. 201, arguing that even in the unlikely event that the Court should determine following remand that the FHWA's explanation of the funding commitment is insufficient, that can be easily fixed by the project sponsors making a larger financial commitment.

Accordingly, the Court will deny plaintiff's application for emergency injunctive relief.

On the issue of filing of briefs, a note on what the Court has considered in reaching the above conclusions -- findings and conclusions.

There were multiple briefs filed in connection with this emergency motion. Some, like plaintiff's reply, were not specifically authorized by the rules or accepted by leave of Court after consultation with the parties.

Some, however, like those from amicus curiae, both in support and opposing the motion, were not approved by consent of the parties nor the Court. See plaintiffs's reply at 4, Note 1.

Plaintiff encouraged the Court not to consider any of the filings by amicus curiae and the Court agrees that it will

not and did not consider those unauthorized filings from either side.

A written order reflecting the Court's conclusions expressed today will be entered shortly. In a nutshell, that order will provide that the plaintiff's Order to Show Cause is denied in light of the text order ECF No. 119 setting the schedule for briefing and oral argument on plaintiff's application.

Further, that plaintiff's application for clarification and/or reconsideration is denied and that the plaintiff's application for a temporary restraining order and preliminary injunction is denied.

That concludes the Court's recitation of its findings and conclusions.

The Court thanks the parties for their participation today, the quality of their presentations, and the briefs submitted to the Court in very short order.

Mr. Mastro, you rise.

MR. MASTRO: Yes, Your Honor. Given Your Honor's ruling and the lateness of the hour and we have to await the written order and then notice an appeal, the likelihood that we will be able to get an emergency application before the Third Circuit until tomorrow at the earliest on a weekend when they're flipping the switch, you know, at 11:59 on Sunday, we respectfully request the Court grant an emergency injunction

giving us several days to have our application heard in the Third Circuit.

We will make it by tomorrow and that would give time for the Third Circuit to decide the question of whether to grant a temporary restraining order or a preliminary injunction during the pendency of the appeal.

We respectfully request that Your Honor give us five days to allow the Third Circuit and one judge in the Third Circuit to take up that issue because it seems highly unlikely that we'll be able to get before even a single judge by Sunday night.

THE COURT: I can assure you, Mr. Mastro, I have been in contact with the clerk's office at the Third Circuit all day. They are awaiting my phone call telling them of the outcome of this proceeding and they are prepared to receive a phone call from you. They are working acidulously to make sure that a judge or judges are available to hear your emergency request.

MR. MASTRO: I understand that, Your Honor, and, yes, we have also been on the phone. Your Honor --

THE COURT: Mr. Mastro, I'll let you take it up with the Third Circuit. I have made my decision for the day.

MR. MASTRO: So Your Honor is denying our request for --

THE COURT: I'm denying your request.

Any other business before the Court?

UNIDENTIFIED SPEAKER: I'm a member of the public -- excuse me, media. May I approach and be heard?

THE COURT: You're not a party to this case. I have made my decision. Anything you want to ask anybody, you can.

The Court stands by its written opinion and what it read into the record. The Court has no other comments.

There being no further business, this matter is adjourned.

THE DEPUTY CLERK: All rise.

(Which were all the proceedings held in the above-entitled matter on said date.)

* * * * *

FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I, **Lisa A. Larsen, RPR, RMR, CRR, FCRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript from the record of proceedings in the above-entitled matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR

Official U.S. District Court Reporter ~

District of New Jersey

DATED this January 5, 2025